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**Conservation Colorado  
San Juan Citizens Alliance  
San Luis Valley Ecosystem Council  
Western Resource Advocates  
Wilderness Workshop**

October 24, 2013

House Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

**RE: Closely Tailor H.R. 3189 To Ensure that U.S. Forest Service “Bypass Flows” Continue to Protect the Health and Economic Benefit of the Nation’s Headwaters.**

Dear Chairman Hastings, Ranking Member DeFazio, and House Committee on Natural Resources membership:

Forest Service “bypass flows” are an important tool for protecting the nation’s headwater streams, enjoyed by millions of Americans each year, and a linchpin of the economy in many communities. In Colorado, legendary rivers like the Fraser, Blue, and Eagle rivers are protected by a Forest Service bypass flow requirement, keeping rivers arising on federal lands from drying up due to dams or diversions. These common-sense protections help balance the needs of our growing population with the aquatic habitat and recreation values that make our western rivers so special.

Although we appreciate the efforts of the bill sponsors to address the recent controversy over the proposed Forest Service water clause rulemaking, we are concerned that H.R. 3189 (“Water Rights Protection Act”) will have a broader impact than the bill sponsors intended. While the drafters of the bill may have intended to address the Forest Service’s attempt to *leverage federal ownership* of private water rights, as drafted H.R. 3189 may impact the *use* of private water rights on federal land generally. Specifically, H.R. 3189 could be interpreted to limit the Forest Service and other federal land agencies’ authority to require bypass flows as an appropriate condition to using federal lands.

We urge you to amend H.R. 3189 (and any related legislation) to preserve long-standing and legitimate exercise of authority to protect rivers arising on and flowing through

**COLORADO** • 2260 BASELINE ROAD, SUITE 200 • BOULDER, CO 80302 • 303.444.1188 • FAX: 303.786.8054 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)  
**NEVADA** • 204 N. MINNESOTA STREET, SUITE A • CARSON CITY, NV 89703 • 775.841.2400 • FAX: 866.223.8365 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)  
**NEW MEXICO** • 409 E. PALACE AVENUE, SUITE 2 • SANTA FE, NM 87501 • 505.820.1590 • FAX: 505.820.1589 • EMAIL: [info@westernresources.org](mailto:info@westernresources.org)  
**UTAH** • 150 SOUTH 600 EAST, SUITE 2AB • SALT LAKE CITY, UT 84102 • 801.487.9911 • EMAIL: [utah@westernresources.org](mailto:utah@westernresources.org)

federal land.

The authority and propriety of federal agencies to regulate the use of water, including the exercise of private water rights, on federal lands is beyond doubt. *See* David H. Getches, "Bypass Flows" on National Forest Lands: J. Oversight Hearing Before the Subcomm. on Forests and Forest Health and the Subcomm. on Water and Power of the H. Comm. on Res., 107<sup>th</sup> Cong. 38-45 (2001) (on file at Western Resource Advocates). We do not oppose legislative efforts specifically targeted to curb federal agencies from seeking *title* (either fee title or title to a leasehold estate) to private water rights.

We hope to work with your staff and other stakeholders to preserve federal agencies' bypass flow authority (and other appropriate authorities) to protect our nations' headwaters while addressing the legitimate concerns of private water right holders. We would welcome the opportunity to meet with you and your staff to discuss our recommendations.

If you have any comments, questions, or concerns please contact Bart Miller at (303) 444-1188 x 219, or [bart.miller@westernresources.org](mailto:bart.miller@westernresources.org).

Thank you for considering our request.

Sincerely,

A handwritten signature in cursive script that reads "Bart P. Miller".

Bart Miller, Water Program Director  
Western Resource Advocates

Becky Long, Advocacy Director  
Conservation Colorado

Dan Randolph, Executive Director  
San Juan Citizens Alliance

Christine Canaly, Director  
San Luis Valley Ecosystem Council

Will Roush, Wilderness Organizer  
Wilderness Workshop